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May 25, 2023

VIA ECF

Honorable Margo K. Brodie
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*,
 No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address issues raised in this litigation through mediation.

I. Background

I have continued to receive call and videoconference data from the parties. I also continue to be in communication with the Federal Defenders, Inc. (“Plaintiff”) and their counsel, the government, and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at the MDC.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC.

II. Telephonic Contact

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls are scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

According to information received from the parties, MDC scheduled 435 calls between April 27 and May 24. Of these 435 calls, 329 were completed,² 21 were attempted but not completed,³ 13 were rescheduled or cancelled by the inmate’s attorney,⁴ 11 were not completed because the inmate was on a different floor,⁵ eight were not completed because of an institutional lockdown, eight were not completed because the inmate refused, eight were not completed because the inmate was not at the institution, five were not completed because the inmate was in SHU,⁶ four were not completed because the inmate was in court, three were not completed because the inmate had a legal visit, two were not completed because the inmate’s unit had a lockdown,⁷ one was not completed due to technical difficulties,⁸ one was not completed because the inmate was on a bus,⁹ and one was not completed because the inmate had a medical emergency. Finally, nine calls were

¹ I held joint mediation calls with the parties on May 9 and May 23, 2023.

² The Federal Defenders reported one of these calls as not completed.

³ The Federal Defenders reported one of these calls as completed.

⁴ The Federal Defenders reported one of these calls as completed.

⁵ The MDC reported that six of these calls were later completed and two were rescheduled by the inmate’s attorney.

⁶ The MDC reported that two of these calls were later rescheduled and completed.

⁷ The MDC reported that one of these calls was later rescheduled and completed.

⁸ The MDC reported that this call was later rescheduled and completed.

⁹ The Federal Defenders reported this call as completed.

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not completed for unknown reasons,¹⁰ and we are unaware of the outcome for 10 calls. We are working with the parties to gather more information about these calls.

Additionally, Federal Defenders report some technical issues over the past four weeks.

III. Videoconferencing

According to the information received from the parties, MDC scheduled 184 videoconferences between April 27 and May 24. Of these 184 VTCs, 142 were completed, four were completed as a call,¹¹ five were attempted but not completed, five were not completed because the inmate refused the VTC, seven were rescheduled or cancelled by the inmate's attorney, seven were not completed because of an institutional lockdown, five were not completed because the inmate was on a different floor,¹² two were not completed because the inmate was in court, one was not completed because the inmate was in SHU, one was not completed because the inmate was at work,¹³ one was not completed because the inmate was on suicide watch, and one was not completed because the inmate was not at the institution. Finally, one VTC was not completed for unknown reasons, and we are unaware of the outcome for six VTCs. We are working with the parties to gather more information about these VTCs.

Again, Federal Defenders report some technical issues with VTCs over the past four weeks.

IV. In-Person Visiting

Over the past four weeks, the parties have continued to discuss the tracking of attorney wait times. The MDC continued to collect data during this time period, and that data is available for tabulation should specific time-tracking concerns arise. The parties continue to discuss ways to efficiently collect the data and increase participation by the Defense Bar in the tracking system while minimizing the burden on the MDC.

The parties continue to discuss issues relating to the communication of information within the institution. For example, the parties discussed a recent incident in early May 2023, where the institution cancelled an inmate's legal call and directed the attorney to reschedule the call themselves. The institution clarified that this email incorrectly placed the responsibility on the inmate's attorney to reschedule the cancelled call rather than the institution, and these procedures are being reinforced with the staff. Additionally, the parties discussed an incident from May 18, 2023, where an attorney waited over an hour for their client to be escorted to a visiting room and was informed that

¹⁰ The Federal Defenders reported one of these calls as completed.

¹¹ The parties reported that these VTCs were switched to a call because of technical issues.

¹² The Federal Defenders reported one of these VTCs as completed. The MDC reported that one of these VTCs was later rescheduled and completed, one was later rescheduled by the inmate's attorney, and one was later attempted and cancelled by the inmate's attorney.

¹³ The MDC reported that this VTC was later rescheduled and completed.

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the delay was due to the inmate's disagreement with an officer over required footwear. The inmate requested a lieutenant's intervention at the institution, who resolved the disagreement and allowed for the legal visit to proceed. The parties also discussed an incident from May 23, 2023, where a paralegal attempted to hand deliver mail to the institution, which was not accepted due to the envelope's size despite similar envelopes being provided in the past. This incident was of particular concern because the envelope contained discovery materials relevant to the inmate's trial the following week. The institution will continue to investigate this incident and provide an update when possible.

Ongoing technical issues with telephones and VTC equipment in various units are being investigated by staff and addressed as necessary. The parties discussed a series of incidents in late April and May 2023 with mobile VTC equipment in East SHU. Specifically, the mobile VTC equipment requires that the MDC provide a link for the inmate's attorney to connect to the VTC in advance, and the staff had forgotten to provide this link on various occasions. The institution explained that it would reinforce this policy with employees to avoid similar issues in the future. The institution also noted that the mobile VTC equipment would eventually be replaced by a permanent VTC unit, which would prevent the need for a link to be shared altogether in the future. At this time, a permanent VTC unit has been installed in East SHU, and the institution will provide an update once it is operational. Additionally, the parties discussed ongoing audio issues during VTCs that are worsened by screen protectors blocking each unit's speakers. The institution explained that it has tried to mitigate this issue by offering headphones to inmates, which not every inmate accepts for the VTC. Moving forward, the institution will continue instructing the staff to remain in the room with each inmate for one to two minutes to ensure that there are no audio issues as well. Attorneys will also encourage that their clients accept headphones when offered. Finally, the institution recently noted that it was amenable to installing phones in the visiting area in SHU, and an estimated completion date will be provided when possible.

I will continue to discuss these and other issues with the parties.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink LLP
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